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9 RITE AID CORPORATION

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19 Attorneys for Plaintiff, Kimberly Beagle

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

22 KIMBERLY BEAGLE,
23 Plaintiff,
24 vs.

25 RITE AID CORPORATION; and DOES
26 1 TO 100, INCLUSIVE,
27 Defendants.

Case No.: CV08-1517-PJH

**JOINT CASE MANAGEMENT
STATEMENT**

Date: Thursday, August 14, 2008
Time: 2:30 p.m.
Dept.: Courtroom 3, 17th Floor

The parties jointly submit this case management statement.

1. Jurisdiction and Service: This court has subject matter jurisdiction over this lawsuit (exclusive of claims that Rite Aid has or may challenge for Plaintiff's failure to exhaust administrative remedies) by virtue of diversity of citizenship. Plaintiff is a citizen

1 of California whose claims for relief exceed \$75,000. Rite Aid is a
2 Delaware corporation with its principle place of business in
3 Pennsylvania.

4 2. Facts:

5 Plaintiff asserted 12 causes of action against Rite Aid arising
6 from her employment as a Sales Clerk/Cashier at the Rite Aid drug
7 store located in Fortuna, California. Her causes of action include
8 sexual harassment, sex discrimination, failure to prevent
9 discrimination and harassment, retaliation, wrongful termination
10 in violation of public policy, retaliation under Labor Code section
11 1102.5, battery, sexual assault and battery, intentional infliction of
12 emotional distress, and invasion of privacy. The disability
13 harassment cause of action was dismissed following Rite Aid's
14 motion to dismiss pursuant to Federal Rule of Civil Procedure
15 12(b)(1).
16

17 Most of Plaintiff's causes of action arise from discrimination,
18 harassment, and retaliation she allegedly experienced while
19 working at Rite Aid's Fortuna, California store. Among other
20 things, Plaintiff claims she was subjected to unwelcome lewd and
21 derogatory behavior and comments by Shift Supervisor Chris
22 Young, including an incident on July 6, 2005 when Mr. Young
23 allegedly pushed Plaintiff's head into his groin area and told her
24 that he liked her better down there. Plaintiff alleges that after she
25 complained of the harassment, store management did not take her
26 complaints seriously and a "blame the victim" approach was
27 implemented by the store. As a result, Plaintiff alleges she was
28 unable to return to work because of the intolerable working

1 conditions and was disabled with diagnosis of post traumatic
2 stress disorder, anxiety and depression. She also alleges that she
3 experienced neck strain from Chris Young's action of pushing
4 down on her head on July 6, 2005. Plaintiff also claims sexual
5 assault and battery from this incident. Plaintiff did not return to
6 work at Rite Aid after she reported the July 6 incident on July 8,
7 2005. Plaintiff claims that she requested a job transfer to the
8 Eureka store in early 2006, but that Rite Aid told her that it would
9 not be possible because of issues of seniority.

10
11 Plaintiff's invasion of privacy cause of action arises from the
12 alleged disclosure of Plaintiff's medications by Rite Aid pharmacy
13 employees to non-pharmacy Rite Aid employees.

14 Plaintiff filed a charge of discrimination with the Department
15 of Fair Employment (hereinafter, "DFEH") and Housing on June 9,
16 2006, complaining of discrimination and harassment on the basis
17 of sex. After she received a right to sue from the DFEH, Rite Aid,
18 on April 9, 2007, terminated Plaintiff's employment. Plaintiff filed
19 another charge of discrimination with the DFEH on May 14, 2008
20 alleging discrimination, harassment and retaliation on the basis of
21 sex and disability.

22 Rite Aid denies all liability, and claims that Plaintiff welcomed
23 and, in fact, participated in the sexually-charged comments and
24 joking at the Fortuna store, including joking with Mr. Young.
25 Moreover, Rite Aid takes the position that it terminated Plaintiff's
26 employment for job abandonment, as Plaintiff had been on leave
27 for nearly two years at the time of her termination. Rite Aid claims
28 that it offered Plaintiff a transfer to Rite Aid's Eureka store in July

1 2005 and August 2006, but Plaintiff did not respond to either offer.
2 Plaintiff claims that she did not accept Rite Aid's offer to transfer,
3 because the offers were made while her DFEH claims were pending
4 and it was her understanding through the advice of the DFEH that
5 accepting the transfer would have prohibited her ability to recover
6 her medical bill, and she was told that Rite Aid had refused to pay
7 her medical bills.

8 3. Legal Issues: At this time, the parties do not dispute any of the
9 applicable law.

10 4. Motions: No motions are currently pending. Rite Aid filed a
11 motion to dismiss Plaintiff's disability harassment claim on the
12 grounds of Plaintiff's failure to exhaust administrative remedies.
13 The Court granted that motion on June 4, 2008. Rite Aid intends
14 to bring a motion for summary judgment pursuant to FRCP
15 12(b)(6) after sufficient discovery.

16 5. Amendment of Pleadings: Rite Aid does not anticipate amending
17 its answer. Plaintiff is considering an amendment to her complaint
18 to add the DFEH charge filed on May 14, 2008 and the resulting
19 right to sue letter issued by the DFEH. Rite Aid will oppose any
20 request for leave to amend to add these late-filed claims.

21 6. Evidence Preservation: Rite Aid knows of no electronically-
22 recorded material in this action. It has taken steps to preserve the
23 documents in its possession pertinent to Plaintiff's sexual
24 harassment and termination-related claims. As Rite Aid did not
25 know about the alleged invasion of privacy claim, it has not
26 specifically sought to preserve any potentially probative documents
27 related specifically to that claim, but has preserved Plaintiff's
28 pharmacy records as well as its own records relating to her

1 prescriptions as required by law. After a diligent search and
2 reasonable inquiry, Plaintiff is not in possession of any
3 documentary evidence in need of preservation.

4 7. Disclosures: The parties exchanged initial disclosures on June 27,
5 2008.

6 8. Discovery:

7 There are no proposed changes to the statutory limitations of
8 discovery rules.

9 Rite Aid has already propounded initial sets of special
10 interrogatories and requests for production. Rite Aid anticipates
11 deposing Plaintiff, approximately three to five percipient witnesses,
12 and approximately two to three health care providers.

13 Plaintiff expects to propound and serve written discovery on
14 Defendant Rite Aid to include interrogatories, request for
15 production and request for admissions. Plaintiff also anticipates
16 taking the depositions of the harasser, Chris Young; the store
17 manager, Leon Comerer; the Human Resources Manager, Steve
18 Shipman; supervisor Cinda Cooper; and supervisor Leslie Pogh;
19 the police officer that questioned Chris Young, as well as other
20 store employees who witnessed the harassment and discrimination
21 against Plaintiff.

22 9. Class Actions: Not applicable.

23 10. Related Case: None.

24 11. Relief: Plaintiff seeks special, general damages and punitive
25 damages from Rite Aid, as well as costs and statutory attorney's
26 fees. Plaintiff seeks medical special damages exceeding \$2,000.
27 She also seeks lost wages from July 8, 2005 through October 13,
28

2007. Plaintiff earned \$11.35 per hour (\$454 per week), which calculates to a wage loss of \$53,572.

12. Settlement and ADR: The parties have agreed to private mediation within 180 days of the case management conference, or on before December 26, 2008. The parties indicated this agreement on its Stipulation and Proposed Order for ADR, filed on June 5, 2008. Prior to mediation, Rite Aid must depose Plaintiff, who now lives in Riverside County. Furthermore, prior to mediation, one or both parties will need to depose several employees of the Fortuna store as of July 2005 (including the main alleged perpetrator of the harassment, Christopher Young), many of whom no longer work for Rite Aid and may be difficult to locate and most, if not all, of whom Rite Aid expects live in or about Fortuna, California, which is 250 miles from Defendant's counsel's office.

13. Consent to Magistrate Judge for All Purposes: The parties do not consent to a magistrate judge for all purposes.

14. Other References: Not applicable.

15. Narrowing of Issues: Rite Aid requests the bifurcation of presentation of evidence related exclusively to punitive damages until after a finding of malice, oppression, or fraud. At this time, the parties do not know of any issues that can be narrowed by agreement. Rite Aid intends to move for summary adjudication of any and all causes of action suitable for summary judgment after sufficient discovery.

16. Expedited Schedule: This is not a case that can be handled on an expedited schedule with a streamlined procedure, given the amount in controversy and the number and distance of witnesses.

17. Scheduling: The parties have agreed to following schedule:

- a. Designations of experts, if any, on April 15, 2009;
- b. Non-expert discovery cut-off, on May 15, 2009;
- c. Supplemental designation of experts, on April 29, 2009
- d. Hearing of non-dispositive motions on or before May 22, 2009;
- e. Expert discovery cut-off on August 5, 2009
- f. Hearing of dispositive motions, on or before June 26, 2009;
- d. Pretrial disclosures on August 5, 2009;
- e. Pretrial conference on August 7, 2009;
- f. Trial on September 7, 2009.

18. Trial: Both parties have requested trial by jury, with an expected trial length of seven to ten days.

19. Disclosure of Non-Party Interested Entities or Persons: Rite Aid has filed the Certification of Interested Entities or Persons, certifying that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: Rite Aid Corporation (the named defendant) and Thrifty Payless Inc. dba Rite Aid.

Plaintiff is unaware of any interested entities or persons that have a financial interest in the subject matter in controversy or in a party to the proceeding, or any other kind of interests that could be substantially affected by the outcome of the proceeding.

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1 20. Other Matters: None.

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3 DATED: August 1, 2008

MAYALL, HURLEY, KNUTSEN,
SMITH & GREEN

4
5 /s/ Mark S. Adams

6 MARK S. ADAMS

7 KIMBERLY D. WILLY

8 Attorneys for Plaintiff

9 KIMBERLY BEAGLE

10 DATED: August 1, 2008

KELLY, HOCKEL & KLEIN P.C.

11 /s/ Annmarie M. Liermann

12 JONATHAN ALLAN KLEIN

13 ANNMARIE M. LIERMANN

14 Attorneys for Defendant

15 RITE AID CORPORATION